

REMARKS

This is a full and timely response to the outstanding non-final Office Action June 16, 2006. The Examiner has restricted the Applicant to prosecute one of two (2) groups of claims identified in the Office Action. In response to the restriction requirement, Applicant respectfully elects to prosecute the claims of Group II, claims 4-11.

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Restriction only Proper to Avoid "Serious Burden"

35 U.S.C. § 121 provides that restriction to one of two or more claimed inventions is proper if the inventions are "independent and distinct." However, MPEP § 803, entitled "Restriction - When Proper," explicitly states that if search and examination of two or more inventions can be made without "serious burden," the Examiner must examine the two or more inventions. Specifically, MPEP § 803 states:

If the search and examination of an entire application can be made without serious burden, *the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.*
[MPEP § 803 (emphasis added)]

Accordingly, if no "serious burden" would be imposed on the Examiner, he or she must examine the claims of multiple inventions or species. MPEP § 803 further provides guidelines as to what constitutes a "serious burden." Specifically, that section provides:

For purposes of the initial requirement, a serious burden on the examiner may be *prima facie* shown if the examiner shows by appropriate explanation as defined in MPEP § 808.02.

[MPEP § 803]

In this case, the Examiner has not shown *prima facie* serious burden in that the Examiner has not explained a separate classification, or separate status in the art, or a different field of search. Accordingly, the election requirement fails to comply with MPEP § 803.

It is for these reasons that Applicant believes the present election requirement to be improper and unfair. Applicant expressly reserves the right to present the non-elected claims, or variants thereof, in continuing applications to be filed subsequent to the present application. Should the Examiner have any questions regarding this response, the Examiner is invited to telephone the undersigned attorney at (858) 655-4157.

Respectfully submitted,
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